

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zev Carter	Team: Squad #3	CCRB Case #: 201806661	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/13/2018 4:20 PM	Location of Incident: Lenox Avenue and West 132nd Street; within the confines of the 32nd Precinct Stationhouse	Precinct: 32	18 Mo. SOL 2/13/2020	EO SOL 2/13/2020	
Date/Time CV Reported Tue, 08/14/2018 11:59 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/14/2018 11:59 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Erick Larios	12939	935159	SRG 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kenson Nelson	01838	940505	SRG 1

Officer(s)	Allegation	Investigator Recommendation
A.POM Erick Larios	Abuse: At Lenox Avenue and West 132nd Street, Police Officer Erick Larios stopped § 87(2)(b)	
B.POM Erick Larios	Abuse: At Lenox Avenue and West 132nd Street, Police Officer Erick Larios searched § 87(2)(b)	
C.POM Erick Larios	Discourtesy: At Lenox Avenue and 132nd Street in Manhattan, Police Officer Erick Larios spoke discourteously to § 87(2)(b)	
D.POM Erick Larios	Discourtesy: Inside the 32nd Precinct stationhouse, Police Officer Erick Larios spoke discourteously to § 87(2)(b)	
E.POM Erick Larios	Off. Language: Inside the 32nd Precinct stationhouse, Police Officer Erick Larios made remarks to § 87(2)(b) regarding his race.	

Case Summary

On August 14, 2018, § 87(2)(b) filed this complaint with the CCRB over the phone (**01 Board Review**).

On August 13, 2018, § 87(2)(b) was walking southbound on the west side of Lenox Avenue in Manhattan after finishing his work day. He was carrying a knife which was clipped to his right-side pants pocket, with the clip on the outside of his pocket. At the corner of Lenox Avenue and West 132nd Street, Police Officer Erick Larios and Police Officer Kenson Nelson of Strategic Response Group 1 pulled alongside of § 87(2)(b) in their vehicle.

PO Larios exited the vehicle, asked § 87(2)(b) “what’s that you’re carrying?” (**Allegation A: Abuse of Authority**, § 87(2)(g)), and immediately removed § 87(2)(b)’s pocket knife from his right pants pocket (**Allegation B: Abuse of Authority**, § 87(2)(g)).

PO Larios told § 87(2)(b) that he had stopped him because he saw the knife. § 87(2)(b) said that this was not possible: if he was walking southbound on the west side of the street, how could PO Larios have seen § 87(2)(b)’s knife when he pulled up behind him? § 87(2)(b) asked PO Larios if he had “wrap around vision.” PO Larios told § 87(2)(b) “now you’re just being an asshole” (**Allegation C: Discourtesy**, § 87(2)(g)). § 87(2)(b) was arrested for possession of a gravity knife (**02 Board Review**).

Within the confines of the 32nd Precinct stationhouse, PO Larios searched for § 87(2)(b)’s information, and told him, “if I find any arrests, your ass is going downtown” (**Allegation D: Discourtesy**, § 87(2)(g)). In the holding cell of the stationhouse, PO Larios was asking for § 87(2)(b)’s pedigree information so that he could write an arrest report. PO Larios said that he could see PO Nelson’s skin, which was “soot black,” and use it for comparison. § 87(2)(b) said that he and PO Nelson had the same skin tone, and asked PO Larios, “we’re the exact same complexion. Are you saying I’m ‘soot black?’” PO Larios said, “all you guys look alike” (**Allegation E: Offensive language**, § 87(2)(g)). § 87(2)(b) was released from the 32nd Precinct stationhouse with a desk appearance ticket.

There is no video footage in this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: At Lenox Avenue and West 132nd Street, Police Officer Erick Larios stopped § 87(2)(b)

Allegation (B) Abuse of Authority: At Lenox Avenue and West 132nd Street, Police Officer Erick Larios searched § 87(2)(b)

It is undisputed that § 87(2)(b) was walking southbound on Lenox Avenue, and that he was stopped on the corner of West 132nd Street and Lenox Avenue by PO Larios and PO Nelson. It is undisputed that § 87(2)(b) was carrying a knife in his right pocket, and that the clip of the

knife was on the outside of the pocket. It is undisputed that PO Larios seized the knife immediately upon stopping § 87(2)(b) without first asking for permission.

§ 87(2)(b) stated **(03 Board Review)** that on August 13, 2018 at approximately 4:00 p.m., he had just crossed the street, and was walking southbound on the west side of Lenox Avenue with his pocketknife in his right pocket, and its dark grey metal clip was visible on the outside of his pants. PO Larios and PO Nelson pulled up beside him at the intersection with West 132nd Street. PO Larios, who was sitting in the passenger's seat, exited the vehicle. He asked § 87(2)(b) "what's that you're carrying?" and, without asking for consent, immediately removed § 87(2)(b)'s pocket knife from his pocket.

§ 87(2)(b) said that PO Larios asked him why he was carrying a knife. § 87(2)(b) told him that he used it to cut sheetrock, and that he did work as a contractor. He told PO Larios that the blade was legal. PO Larios took the knife in his right hand and flung it towards the ground to try and open it. On his second try, the knife opened. § 87(2)(b) could not see whether PO Larios opened the knife with the help of his finger. § 87(2)(b)'s knife came in a set of three from a \$.99 cent store, had a blade that was under three inches in length, and did not have an assisted opening mechanism. The knife had a lock that keeps it open, and the user needs to press the lock in order to open and close the knife. The blade itself has a small metal knob that helps the user open it with their finger. § 87(2)(b) said the knife was not a gravity knife. § 87(2)(b) was also carrying his silver work keychain in his right pocket, and his blue car keychain on his left side belt loop **(04 Board Review)**. § 87(2)(b) was wearing exactly what he wore to the interview on the day of the incident **(05 Board Review)**.

PO Larios stated **(08 Board Review)** that on August 13, 2018 at approximately 4:00 p.m., he was travelling northbound on Lenox Avenue between West 132nd and 133rd Streets in the passenger seat of a vehicle that PO Nelson was driving. He first observed § 87(2)(b) when he was walking southbound on the east side of Lenox Avenue. Upon first sight of § 87(2)(b) PO Larios' vehicle was travelling at approximately 5 miles per hour in the lane closest to the cars that were parked on the side of the street. Vehicle and pedestrian traffic were light.

PO Larios could see the shiny metal clip that was attached to § 87(2)(b)'s pants pocket, which was facing the roadway. The clip was two inches long, and did not look like a pen clip. In addition, the top of the clip was wider than a pen would have been. At this point, PO Larios thought that § 87(2)(b) was carrying a knife. PO Larios could not see any discernable shapes in § 87(2)(b)'s pockets. PO Larios told PO Nelson that § 87(2)(b) had a knife, and PO Nelson did a U-turn on Lenox Avenue. At this point, § 87(2)(b) was in the median of the street, crossing to the west side. PO Nelson completed the U-turn, and began driving southbound on Lenox Avenue.

PO Nelson and PO Larios passed § 87(2)(b) and stopped their car in front of him on the southwest corner of Lenox Avenue and West 132nd Street. PO Larios exited the vehicle, asked § 87(2)(b) if there was any reason why he had a knife, and immediately grabbed the knife due to safety concerns.

PO Larios told § 87(2)(b) that possession of a knife longer than four inches in New York State was a violation. Then, PO Larios opened § 87(2)(b)'s knife by holding its handle and flicking his right wrist. The knife opened with centrifugal force, and had no locking mechanism that would obstruct the movement of the blade. He told § 87(2)(b) that, because the knife had opened with centrifugal force, possession of it was now a misdemeanor. PO Larios and PO Nelson placed § 87(2)(b) in handcuffs, and brought him to the 32nd Precinct stationhouse. During the incident, § 87(2)(b) was “the calmest perp” that PO Larios had ever dealt with.

PO Nelson stated (**09 Board Review**) that on August 13, 2018 at approximately 4:00 p.m., he was driving a police vehicle northbound on Lenox Avenue. PO Larios, who was sitting in the passenger seat, told PO Nelson that he saw a man with a knife clipped to one of his pockets, and pointed the man out. PO Nelson made a U-turn with the vehicle. When PO Nelson first saw § 87(2)(b) he was crossing Lenox Avenue in the direction of West 132nd Street. The officers' vehicle was travelling at 5-15 miles per hour, and vehicle traffic was normal.

He and PO Larios stopped § 87(2)(b) a minute later on the west corner of West 132nd Street and Lenox Avenue. PO Nelson parked the vehicle a few feet ahead of § 87(2)(b) and PO Larios got out of the car and stopped him. PO Nelson had to walk around the car in order to get to the sidewalk, and could not hear what PO Larios first said to § 87(2)(b) or see PO Larios seize the knife from § 87(2)(b).

PO Nelson rounded the car and saw PO Larios flicking open § 87(2)(b)'s knife. He did not see how it came into PO Larios' possession, and never tested the knife himself. PO Nelson could not remember specific details about the knife, only that it had a handle and a blade. PO Larios discussed the knife with § 87(2)(b) some more, and put him in handcuffs. After the arrest, the officers found that § 87(2)(b) had a keychain and a cell phone, as well.

PO Larios prepared a deposition (**16 Board Review**) in support of his arrest of § 87(2)(b). The deposition states that PO Larios took the knife from § 87(2)(b)'s front right pants pocket, and that PO Larios knew the knife was a gravity knife based on “training and experience as a police officer,” and because PO Larios was able to open the knife by flicking his wrist, after which the blade swung open and locked into place.

Carrying or wearing knives in plain view outside of one's clothing is a violation of New York City Administrative code §10-133 (**14 Board Review**).

To conduct a stop, an officer must have reasonable suspicion to believe that a person has committed, is about to commit, or is in the process of committing a misdemeanor or felony. For a search, an officer must have probable cause that a subject is armed and dangerous. The stop or search is not justified by what it produces, but what knowledge an officer possessed at the moment of his decision to initiate the stop, and any reasonable inferences he made with this information (People v. De Bour, 40 N.Y.2d (1976) (**16 Board Review**)).

When stopping an individual for possessing a gravity knife, an officer must have reason to believe that the object they observe is a gravity knife, as opposed to a similar, legal object such as a small pocketknife. An officer must be able to possess “specific and articulable facts from which

he or she inferred that the defendant was carrying a gravity knife” in order to justify the stop (People v. Brannon, 16 N.Y.3d 596, 602 (2011) (**13 Board Review**)).

§ 87(2)(g)

Allegation (C) Discourtesy: At Lenox Avenue and West 132nd Street, Police Officer Erick Larios spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that PO Larios told him that he had been stopped because PO Larios saw his knife. § 87(2)(b) asked him how that was possible if he was walking southbound on the west side of the street with his right-side pocket facing away from this roadway. He asked PO Larios if he had “wrap around vision.” PO Larios told him, “now you’re being an asshole,” and told him to put his hands behind his back. PO Larios and PO Nelson handcuffed § 87(2)(b)

PO Larios denied that he told § 87(2)(b) “now you’re being an asshole.” He stated that the interactions between § 87(2)(b) and the officers went smoothly, and that § 87(2)(b) was not confrontational. After PO Larios opened § 87(2)(b)’s knife, he handcuffed § 87(2)(b)

PO Nelson denied that PO Larios told § 87(2)(b) “now you’re being an asshole.” He stated that § 87(2)(b)’s demeanor was normal, and that after PO Larios found that § 87(2)(b)’s knife was a gravity knife, the officers arrested him.

PO Larios denied having told § 87(2)(b) “now you’re being an asshole,” and PO Nelson stated that PO Larios did not tell this to § 87(2)(b) § 87(2)(g)

Allegation (D) Discourtesy: Inside the 32nd Precinct stationhouse, Police Officer Erick Larios spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that while he was waiting in the holding cell of the 32nd Precinct stationhouse, PO Larios looked for his prior criminal history. PO Larios told him, “if I find any arrests, your ass is going downtown.”

PO Larios denied that he told § 87(2)(b) “if I find any arrests, your ass is going downtown.” He stated that § 87(2)(b) asked the officers about the procedure of processing his arrest at the stationhouse. PO Larios told § 87(2)(b) that if he did not have any warrants, he could be released with a desk appearance ticket. If he did have warrants, he would be going to central

booking for processing. PO Larios did not find any warrants, and so he completed an online arrest report (**02 Board Review**) and finished his arrest paperwork while PO Nelson prepared a voucher for the gravity knife (**07 Board Review**).

PO Nelson denied that PO Larios told § 87(2)(b) “if I find any arrests, your ass is going downtown.” He stated that within the confines of the 32nd Precinct stationhouse, he and PO Larios processed § 87(2)(b)’s arrest. PO Nelson created a property voucher for § 87(2)(b)’s gravity knife.

A warrant search audit report (**06 Board Review**) for August 13, 2018 reveals that PO Larios made two searches for § 87(2)(b) – one at 3:59 p.m. from a phone, and one at 4:34 p.m. from a desktop.

PO Larios denied having told § 87(2)(b) “if I find any arrests, your ass is going downtown,” and PO Nelson stated that PO Larios did not tell this to § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Offensive Language: Inside the 32nd Precinct stationhouse, Police Officer Erick Larios made remarks to § 87(2)(b) regarding his race.

§ 87(2)(b) stated that inside of the 32nd Precinct stationhouse holding cell, PO Larios was asking for his pedigree information, and came to questions regarding his race and height. PO Larios said that he did not need to ask § 87(2)(b) all of the questions because he could see the height markings on the cell wall. PO Larios also said that he could see PO Nelson’s skin, which was “soot black,” and used it for comparison. § 87(2)(b) said that he and PO Nelson had the same skin tone, and asked PO Larios, “we’re the exact same complexion. Are you saying I’m ‘soot black?’” PO Larios told § 87(2)(b) “all you guys look alike.”

PO Larios denied having said that PO Nelson’s skin color was “soot black,” and denied telling § 87(2)(b) “all you guys look alike.” He stated that there was no trouble obtaining § 87(2)(b)’s information about his race or ethnicity, and that § 87(2)(b) did not need to provide any of his information verbally, because it was all on his ID.

PO Nelson denied that PO Larios said that his skin color was “soot black,” and denied telling § 87(2)(b) “all you guys look alike.” He stated that there was no trouble determining § 87(2)(b)’s skin color.

PO Larios denied having said that PO Nelson’s skin color was “soot black,” and denied having told § 87(2)(b) “all you guys look alike.” PO Nelson also denied that PO Larios made these statements. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint that § 87(2)(b) has been a party to (**11 Board Review**).
- This is the third CCRB complaint that has been filed against PO Larios (**12 Board Review**). In CCRB #201110067, PO Lario was exonerated of an allegation of abuse of force. In CCRB #201209029, a complaint containing an allegation of abuse of force was withdrawn.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint for fear of retribution.
- No notice of claim has been filed regarding this incident.
- § 87(2)(b) has no conviction history (**10 Board Review**).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date